law in question could reasonably have been passed for the class because it was in fact a separate class and could have been thought to need a separate treatment. It is true all presumptions must be made in favor of the legislature; and the mere fact that there is but one city included should not necessarily condemn the law. *Darrow* v. *People*, 8 Colo. 418. But if by its terms in no event could any other city even in the future come within the operation of the act, then clearly the intent for its special effect is revealed, and the law is unconstitutional. *State* v. *Mitchell*, 31 Oh. St. 592; *Devine* v. *Cook County*, 84 Ill. 591. It is the province of the court to determine the intent of the legislature as revealed in the statute and the facts within the ordinary notice of a court. It was thus that the Ohio court reached its decision. The decision is notable as a check to a practice which threatens to nullify such constitutional provisions in almost every state. See in accord, *State* v. *Hammer*, 42 N. J. Law 435; *Bray* v. *Hudson*, 50 N. J. Law 82.

SUIT ON GOVERNMENT CONTRACTS IN FOREIGN COURTS. — A decision of interest to Americans because of its connection with the late Spanish War, has recently been handed down in the House of Lords. A Scotch shipbuilding firm had contracted in 1896 to build four torpedo boat destroyers for the Spanish navy, and suit was brought because of the failure to finish them in contract time, whereby Spain was deprived of the use of them in the war. The contract was made by four naval officials, A, B, C, D, "in the name and representation of His Excellency, the Spanish Minister of Marine, in Madrid, hereinafter called the Spanish Government," on the one part, and the Clydebank Engineering, etc., Co., Ltd., on the other. The action was brought by E, F, G, H, four other officials, in the name of a different minister of marine. The decision was that they were entitled to sue. *Castaneda* v. *Clydebank Engineering, etc., Co., Ltd.*, 18 T. L. R. 773. The *ratio decidendi* seems to have been, that this contract was clearly made for the Spanish State; and on behalf of Spain was signed by the proper officials; and that it must have been within the contemplation of the parties that the incumbents of the offices designated would change. Therefore it was simple justice to allow the present incumbents to sue on the contract.

That one state may sue in the courts of another is too well settled to admit of question. *King of Spain* v. *Hullet*, 1 Cl. & Fin. 333; see 15 HARV. L. REV. 59. There is, however, the question in whose name a suit by a state must be brought. The generally accepted opinion has been that if the state be a monarchy, it should be brought in the name of the sovereign; if a republic, in its own name. *United States* v. *Wagner*, L. R. 2 Ch. App. 582. Bearing this in mind, it seems hard to account for the decision in the present case. It is an elementary principle of the law of contract that suit on a contract can be brought only by parties thereto. The contract was made, on the one hand, for the Minister of Marine; no mention was made of his successors. Admitting, for the moment, that the then Minister of Marine was the true party to the contract, he and he only could sue; and the present plaintiff must be nonsuited, for his proof does not correspond with his pleadings. It is clear, however, that the Minister of Marine did not intend to be bound; and it is equally clear that the defendant company had no wish to accept his personal responsibility. The contract was made through the Minister of Marine for a known principal, the Kingdom of Spain. This

was an entirely proper way to make a contract from the standpoint of the law of agency; and, furthermore, government contracts are usually made through the chief official of the appropriate department. It was, then, a matter for the administrative law of Spain to determine what agent should bring suit in the name of the King of Spain. Unquestionably it might settle, on whomsoever it would, — the Minister of Marine as well as any other; but it owed it to the defendant company to have the name of the true principal appear on the writ. Properly the Minister of Marine sues not as successor of the official by whom the contract was made, but as the present agent of the King of Spain. The House may have been, and probably was, influenced by a desire to aid the Spanish government; but the result will be confusion in international law on this point.

LIABILITY OF A PRINCIPAL FOR THE MISREPRESENTATIONS OF HIS AGENT. — That a principal is liable in an action of tort for the expressly authorized misrepresentations of his agent is not disputed. Further, he is liable for misrepresentations not expressly authorized if made by his agent in the course of his employment. *Barwick* v. *English, etc., Bank*, L. R. 2 Ex. 259. The real difficulty in cases of the latter sort is to determine whether the agent was in fact acting in the course of his employment when he made the representation. In the leading case of *Grant* v. *Norway*, 10 C. B. 665, it was decided that the indorsee of a bill of lading issued by the master of a vessel when no goods had been received by him, could not recover from the proprietor of the vessel, because the master was not acting in the course of his employment in issuing the bill of lading before he had received the goods which it purported to represent. The actual decision is supportable on the ground that the indorser could not have recovered because he was party to the agent's fraud, and the indorsee stands in no better position. *Dows* v. *Perrin*, 16 N. Y. 325. But it is submitted that the decision cannot properly be rested upon the ground that the servant was not acting in the course of his employment. It is among the duties of the master of a vessel to issue bills of lading. If the master had issued the bill of lading mistakenly supposing that he had received the goods, it could scarcely be contended that he was not acting in the course of his employment. The nature of the act rather than the mental state of the agent should, according to the best opinion, be regarded in determining whether the act is in the course of employment. *Howe* v. *Newmarch*, 12 Allen (Mass.) 49. Adopting this view, a principal should be held liable whether the agent's representation is or is not intentionally false. *Armour* v. *Mich. Cent. Ry. Co.*, 65 N. Y. 111.

Nevertheless the House of Lords has recently approved the doctrine of *Grant* v. *Norway*, in *George Whitechurch, Ltd.*, v. *Cavanagh*, [1902] A. C. 117. In that case the secretary of the company, to accommodate a friend, certified a transfer of shares directed to Cavanagh, though the certificates for the shares were not lodged in the company's office, as the certification represented. The case cannot be supported, as *Grant* v. *Norway* can, on the ground that Cavanagh was affected by the fraud of one acting in collusion with the agent, for the misrepresentation was made directly to him. See 1 PALMER, COMPANY PREC., *6th ed.*, 323. The judges seem to find difficulty in holding liable a principal so free from all blame. But it is to be remembered that if principals escaped whenever free from blame, there would be no special law of agency.